

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR

APR - 5 2013

THE WESTERN DISTRICT OF OKLAHOMA

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY YMA DEPUTY

JOHN MICHAEL KELLY,

)

)

Petitioner,

)

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vs.

)

No. CIV-12-1270-W

)

THE STATE OF OKLAHOMA,

)

)

Respondent.

)

**ORDER**

On March 28, 2013, United States Magistrate Judge Shon T. Erwin issued a Report and Recommendation in this matter and, among other things, advised petitioner John Michael Kelly that he had the right to voluntarily dismiss this case without prejudice and that if he did so by the designated deadline he would not incur any filing fee.

The matter now comes before the Court on Kelly's Motion to Dismiss Case Without Prejudice, wherein Kelly has requested that this matter be dismissed to permit him the opportunity to exhaust all available state court remedies.

Kelly has the absolute right, as he has so requested, to dismiss the instant action without prejudice because the respondent has filed neither an answer nor a motion for summary judgment. E.g., Rule 41(a)(1), F.R.Civ.P. The filing of a request for dismissal under these circumstances is self-executing, and no judicial approval is required. E.g., Janssen v. Harris, 321 F.3d 998 (10<sup>th</sup> Cir. 2003).

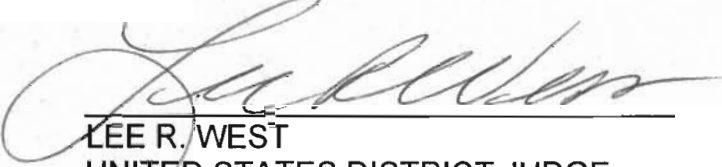
Accordingly, for administrative purposes only, the Court

(1) ADOPTS the Report and Recommendation issued on March 28, 2013, including Magistrate Judge Erwin's suggestion that Kelly is not responsible for any filing fees;

(2) GRANTS Kelly's Motion to Dismiss Case Without Prejudice [Doc. 10] file-stamped April 4, 2013, which the Court has construed as a notice of dismissal; and

(3) deems this matter DISMISSED without prejudice to refiling as of April 4, 2013.

ENTERED this 5<sup>th</sup> day of April, 2013.



LEE R. WEST  
UNITED STATES DISTRICT JUDGE